

**Notice of Allowability**

Application No.

09/803,739

Applicant(s)

SKLAR ET AL.

Examiner

Art Unit

Dwayne K Handy

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE/amendment filed 11/23/2004.
2. ☒ The allowed claim(s) is/are 1-3 and 6-14.
3. ☒ The drawings filed on 12 March 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 11232004
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

***Allowable Subject Matter***

1. Claims 1-3 and 6-14 are allowed.
2. The following is an examiner's statement of reasons for allowance:

Claim 3 was deemed allowable in the previous action, but mistakenly identified as a dependent claim. The Examiner apologizes for the oversight. In claim 3, applicant has claimed (1) a housing comprised of a generally cylindrical body including open and closed ends and having an interior and exterior; (2) a vacuum channel providing fluid communication between the interior and exterior of the cylindrical body; and ***(3) a key mechanism arranged to orient the sample tray and the vials with respect to the housing comprised of a post having a first end connected to the closed end of the cylindrical body as well as a second end with a notch disposed in an annular protrusion.*** Claims 6 and 7 were also deemed allowable in the previous action. Claim 6 has now been amended to include all the limitations of the base claim as well as the limitation of the key mechanism being ***coupled between the sampler tray and housing to uniquely define the position of each vial with respect to the housing.*** The limitation of claim 7 has now been added to claim 1 in order to place claim 1 in condition for allowance. In claim 1 applicant has claimed a (1) a housing including open and closed ends, having an interior and exterior and a vacuum channel providing fluid communication between the interior and exterior of the cylindrical body; (2) a filter assembly disposed over the opening of the housing including a plurality of wells with a plurality of porous media disposed therein; (3) a sampler tray removably disposed in the

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housing; (4) a plurality of vials removably coupled to the sampler tray; and (5) **a key mechanism coupled to the housing that uniquely defines the position of the vials in the housing**. New claim 14 recites the same test sample device as in claims 1 and 6, including the housing, filter assembly, sample tray and vials, but also specifies the structure of the key mechanism as in claim 3. The Examiner considers "Ayasta" to be the closest prior art. Ayasta shows a multilevel filtration device having a housing with a vacuum channel, filter assembly and containers, but does not teach or suggest the key mechanism claimed by applicant.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DKH  
December 2, 2004

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700